

STATE OF INDIANA ) IN THE MARION CIRCUIT/SUPERIOR COURT  
 ) SS:  
COUNTY OF MARION ) CAUSE NO. ~~90-100705PL~~ 20512

STATE OF INDIANA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ELIZABETH BRAY, and )  
 )  
WILLIAM BRAY, )  
individually and doing business as, )  
BRAY'S COMPLETE RESTORATION, )  
 )  
Defendant. )

FILED  
MAY 17 2007  
Clerk of the Marion Circuit Court

**COMPLAINT FOR INJUNCTION,  
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-5-11-14.

2. At all times relevant to this Complaint, the Defendant, William Bray, individually and doing business as Bray's Complete Restoration, was an individual

engaged in business as a home improvement contractor with a principal place of business in Marion County, located at 5414 East 16<sup>th</sup> Street, Indianapolis, Indiana, 46218-4801.

3. The Defendant, Elizabeth Bray, is the spouse of the Defendant, William Bray, and resides in Marion County at 5414 East 16<sup>th</sup> Street, Indianapolis, Indiana, 46218-4801.

### **FACTS**

4. Upon information and belief, the Defendants, William Bray and Elizabeth Bray, have acted in concert to defraud consumers.

5. When, in this Complaint, reference is made to any act of the Defendants, such allegations shall be deemed to mean the principals, agents, representatives, or employees of the Defendants did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of Defendants and while acting within the scope of their duties, employment, or agency for the benefit of the Defendants.

#### **A. Allegations Related to the Defendants' Transaction with the Stricklands.**

6. On or about May 22, 2006, the Defendant, William Bray, on behalf of the Defendants, entered into a contract with Lawrence and Kay Strickland ("Stricklands") of Indianapolis, Indiana, wherein the Defendants represented they would perform various home improvements on the Stricklands' home for a total price of Eleven Thousand Four Hundred and Fifty Dollars (\$11,450.00). Attached and incorporated by reference as Exhibit "A" is a true and accurate copy of the contracts the Stricklands received from the Defendant, William Bray.

7. On or about July 10, 2006, the Stricklands paid William Bray Five Hundred Dollars (\$500.000) in cash as a down payment.

8. On or about June 29, 2006, the Stricklands tendered check number 6219 to the Defendant, William Bray, which was made payable to the Defendant, Elizabeth Bray, in the amount of Two Thousand Five Hundred Dollars (\$2,500.00), as partial payment toward the construction project. Attached and incorporated by reference as Exhibit "B" is a true and accurate copy of the check tendered by the Stricklands to the Defendants.

9. On or about July 24, 2006, the Stricklands tendered check number 6235 to the Defendant, William Bray, which was made payable to the Defendant, Elizabeth Bray, in the amount of Three Thousand Dollars (\$3,000.00), as partial payment toward the construction project. Attached and incorporated by reference as Exhibit "C" is a true and accurate copy of the check tendered by the Stricklands to the Defendants.

10. On or about July 28, 2006, the Stricklands tendered check number 6242 to the Defendant, William Bray, which was made payable to the Defendant, Elizabeth Bray, in the amount of Three Thousand Dollars (\$3,000.00), as partial payment toward the construction project. Attached and incorporated by reference as Exhibit "D" is a true and accurate copy of the check tendered by the Stricklands to the Defendants.

11. The Defendants failed to include the following information in the contracts with the Stricklands:

- a. each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- b. the approximate starting and completion dates of the home improvements;

- c. signature lines for the Defendants or the Defendants' agent and for the Stricklands with a legibly printed or typed version of that person's name placed directly after or below the signature;

12. The Defendants failed to agree unequivocally by written signature to all terms of the home improvement contract before the Stricklands signed the contract and before the Stricklands were required to make any down payment.

13. The Defendants failed to provide a fully executed copy of the home improvement contract to the Stricklands immediately after the Stricklands signed it with the dates the Defendants and the Stricklands executed the contract.

14. The Defendants failed to obtain the necessary permit prior to soliciting the home improvement contract and/or commencing any work under their contract with the Stricklands.

15. The Defendants were not listed as contractors in Marion County at the time of contract formation, as required by the *Revised Code of the Consolidated City and County*, Chapter 875, Section 101.

16. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation they would complete the work within a reasonable period of time.

17. The Defendants have neither completed the work on the Stricklands' home, nor issued a refund to the Stricklands.

**B. Allegations Related to the Defendants' Transaction with the Suttons.**

18. On or about July 31, 2006, the Defendant, William Bray, on behalf of the Defendants, entered into a contract with Carl and Carolyn Sutton ("Sutton") of

Brownsburg, Indiana, wherein the Defendants represented they would perform various home improvements on the Suttons' home for a total price of Five Thousand Eight Hundred and Fifty Dollars (\$5,850.00). Attached and incorporated by reference as Exhibit "E" is a true and accurate copy of the contract the Suttons received.

19. On or about August 16, 2006, the Suttons tendered check number 1246 to the Defendant, William Bray, which was made payable to the Defendant, Elizabeth Bray, in the amount of Two Thousand Five Hundred Dollars (\$2,500.00), as partial payment toward the construction project. Attached and incorporated by reference as Exhibit "F" is a true and accurate copy of the check tendered by the Suttons to the Defendants.

20. The Defendants failed to include the following information in the contracts with the Suttons:

- a. the name and address of the Defendants and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- b. the approximate starting and completion dates of the home improvements; and
- c. signature lines for the Defendants or the Defendants' agent and for the Suttons with a legibly printed or typed version of that person's name placed directly after or below the signature.

21. The Defendants failed to agree unequivocally by written signature to all terms of the home improvement contract before the Suttons signed the contract and before the Suttons were required to make any down payment.

22. The Defendants failed to provide a fully executed copy of the home improvement contract to the Suttons immediately after the Suttons signed it with the dates the Defendants and the Suttons executed the contract.

23. The Defendants failed to obtain the necessary permit prior to commencing any work under their contract with the Suttons.

24. The Defendants were not listed as contractors in Marion County at the time of contract formation, as required by the *Revised Code of the Consolidated City and County*, Chapter 875, Section 101.

25. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of contract formation they would complete the work within a reasonable period of time.

26. The Defendants have neither completed the work on the Suttons' home, nor issued a refund to the Suttons.

#### **COUNT I - VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT**

27. The services described in paragraphs 6 and 18 are "home improvements" as defined by Ind. Code § 24-5-11-3.

28. The transactions referred to in paragraphs 6 and 18 are "home improvement contracts" as defined by Ind. Code § 24-5-11-4.

29. The Defendants are "suppliers" as defined by Ind. Code § 24-5-11-6.

30. By failing to provide the Stricklands and the Suttons with completed home improvement contracts containing the information referred to in paragraphs 11 and 20, the Defendants violated the Home Improvement Contracts Act, Ind. Code § 24-5-11-10.

## **COUNT II - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

31. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 30 above.

32. The transactions referred to in paragraphs 6 and 18 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

33. The Defendants are “suppliers” as defined by Ind. Code § 24-5-0.5-2(a)(3).

34. The Defendants’ violations of the Indiana Home Improvement Contracts Act, referred to in paragraph 11 and 20, constitute deceptive acts by the Defendants, in accordance with Ind. Code § 24-5-11-14.

35. The Defendants’ representations to the consumers the consumer transactions had sponsorship, approval, performance, characteristics, accessories, uses, or benefits it did not have, when the Defendants knew or reasonably should have known the transaction did not have such, as referenced in paragraphs 6, 10, and 18, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

36. The Defendants’ representations to the consumers they would be able to deliver or complete the subject of the consumer transactions within a reasonable period of time, when the Defendants knew or reasonably should have known they could not, as referenced in paragraphs 16 and 25, constitute violations of the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

37. By failing to obtain the proper permit and/or a maintain a general contractor listing in Marion County prior to engaging in, or soliciting to engage in, a

consumer transaction, as referenced in paragraphs 14, 15, 23, and 24, the Defendants violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-10(a)(1).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS  
OF THE DECEPTIVE CONSUMER SALES ACT**

38. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 37 above.

39. The misrepresentations and deceptive acts set forth in paragraphs 6, 11, 14, 15, 16, 18, 20, 23, 24, and 25 were committed by the Defendants with the knowledge and intent to deceive.

**RELIEF**

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Elizabeth Bray and William Bray, individually and doing business as Bray's Complete Restoration, enjoining the Defendants from the following:

- a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract, which includes at a minimum the following:
  - i) The name of the consumer and the address of the residential property that is the subject of the home improvement;
  - ii) The name and address of the Defendants and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
  - iii) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;



- iv) A reasonably detailed description of the proposed home improvements;
  - v) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
  - vi) The approximate starting and completion date of the home improvements;
  - vii) A statement of any contingencies that would materially change the approximate completion date;
  - viii) The home improvement contract price; and
  - ix) Signature lines for the Defendants or the Defendants' agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;
- b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

- c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;
- b. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendants know or reasonably should have known it does not have;
- c. representing, expressly or by implication, the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they cannot; and
- d. soliciting or engaging in a home improvement transaction without a license or permit required by law.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants for the following relief:

- a. cancellation of the Defendants' unlawful contracts with all consumers, including but not limited to Lawrence and Kay Strickland and Carl and Carolyn Sutton, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers to the Defendants, including but not limited to Lawrence and Kay Strickland and Carl and Carolyn Sutton, in an amount to be determined at trial;

- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. on Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. on Count III of the Plaintiff's Complaint, civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By:



Terry Tolliver  
Deputy Attorney General  
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